



## GUIDANCE NOTE 13

### Guiding Principles for Commonwealth entities responding to civil claims involving institutional child sexual abuse

#### *Purpose and Application*

The principles below guide Commonwealth entities when responding to civil claims concerning allegations of institutional child sexual abuse (the principles).<sup>1</sup>

The purpose of these principles is to ensure that Commonwealth entities:

- adopt a consistent approach when responding to these types of claims, and
- instruct their lawyers to take into account the sensitivities involved in handling claims by institutional child sexual abuse survivors.

These principles have been developed to reflect the understanding that the process of civil litigation may be a traumatic experience for survivors of institutional child sexual abuse.

These principles apply to all Commonwealth entities and complement the Commonwealth's general obligation to act as a model litigant which requires that the Commonwealth and its entities act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or a Commonwealth entity.<sup>2</sup>

**Fundamental principle:** Commonwealth entities are to be mindful of the potential trauma that survivors of institutional child sexual abuse may experience during the claims and/or litigation process.

In the **handling of claims** concerning allegations of institutional child sexual abuse, Commonwealth entities should:

1. acknowledge and consider claims without delay and aim to resolve them as quickly as possible, including paying legitimate claims without recourse to formal litigation<sup>3</sup>
2. be mindful of any cultural sensitivities and communicate regularly with claimants and/or their legal representatives about how their claim will be managed and the progress of their claim
3. provide information regarding access to services and support for claimants, including access to counsellors

<sup>1</sup> The principles were developed in response to recommendations made by the Royal Commission into Institutional Responses to Child Sexual Abuse in the [Redress and Civil Litigation Report](#) released on 14 September 2015.

<sup>2</sup> This obligation is set out in paragraph 4.2 and Appendix B of the *Legal Services Directions 2017*.

<sup>3</sup> This mirrors the model litigant obligation, particularly paragraphs 2(a) and 2(b) of Appendix B to the *Legal Services Directions 2017*.

4. where possible and in accordance with relevant laws, facilitate access for claimants and their legal representatives to records and information relating to the claim and the allegations made by the claimant, and
5. acknowledge and act upon existing obligations to report claims of any serious indictable offences to the relevant law enforcement agency.

**In the approach taken to the management and resolution of any claim (litigated or non-litigated)** concerning allegations of institutional child sexual abuse, Commonwealth entities should:

6. where possible and appropriate, consider resolving matters without requiring claimants to make a formal statement of claim or in the case of more than one claimant, a separate statement of claim
7. not disputing claimed facts which the Commonwealth considers are likely to be correct, or which it does not consider is necessary to have proven in order to properly resolve the claim
8. assist claimants and their legal representatives to identify the proper defendant/s if they have not already been identified
9. consider the most appropriate Alternative Dispute Resolution processes in the circumstances of each claim and facilitate an early settlement, where possible
10. not rely on a defence based on the expiration of a statutory limitation period<sup>4</sup>
11. consider claimants' requests for apology, acknowledgement or redress including by offering a written apology in appropriate circumstances
12. pursue a contribution to the settlement amount from the alleged abuser/s or other liable defendant/s, where practical and appropriate, and
13. consider the use of confidentiality clauses on a case by case basis, having regard to the nature of the claim, the preferences of the claimant/s and paragraph 4.5 of the *Legal Services Directions 2017*.

The above principles are intended to guide Commonwealth entities and be applied flexibly with regard to the circumstances of each particular claim. The principles do not prevent action to protect the proper and legitimate interests of the Commonwealth or its entities. They do not preclude all legitimate steps being taken to defend claims, including where a claim is vexatious, unmeritorious or an abuse of process.

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<sup>4</sup> On 4 May 2016 the Attorney-General issued a [Direction](#) pursuant to section 55ZF(1) of the *Judiciary Act 1903* and paragraphs 8.1 and 8.2 of the *Legal Services Directions 2005* (as in force at the time) that Commonwealth agencies are not to plead a defence based on the expiration of a limitation period or oppose an application for an extension of a limitation period in relation to these types of claims. The Direction ceases to apply after 30 April 2019.